

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

- against -

O R D E R
02 CR 441 (JG)

CHRISTOPHER THOMAS,

Defendant.

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JOHN GLEESON, United States District Judge:

The case is before me on a *Crosby* remand from the court of appeals. Such a remand calls upon the district court to, in essence, complete a plain error review by determining whether a nontrivially different sentence would have been imposed had the U.S. Sentencing Guidelines been perceived as advisory, not mandatory.

I have reviewed the case as directed by the court of appeals, and I have determined that the sentence imposed on the defendant would not have been different if I had perceived the Guidelines as advisory only. Accordingly, I conclude that resentencing is not appropriate.

Consistent with that conclusion, the defendant's motions for (1) resentencing (including his request for a recalculation of the restitution order); (2) an order withdrawing his plea of guilty to count two; and (3) appointment of counsel are all denied. His motion dated December 13, 2006 for an amended judgment reflecting his eligibility for parole is denied as well.

So Ordered.

John Gleeson, U.S.D.J.

Dated: Brooklyn, New York
January 3, 2007